Annual Report 2007–08

RENEW. RALLY. REALIZE.

Serving the **workers' right** to know and **industry's right** to safeguard confidential business information

Hazardous Materials Information Review Commission

Conseil de contrôle des renseignements relatifs aux matières dangereuses

Canada

For more information, contact:
Hazardous Materials Information Review Commission
427 Laurier Avenue West, 7th Floor
Ottawa, Ontario K1A 1M3

Telephone: 613.993.4331
Fax: 613.993.5016
Email: hmirc-ccrmd@hc-sc.gc.ca

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Hazardous Materials Information Review Commission

Office of the President

427 Laurier Avenue West, 7th Floor
Ottawa, Canada
K1A 1M3
Web site: www.hmirc-ccrmd.gc.ca

Conseil de contrôle des renseignements relatifs aux matières dangereuses

Bureau de la directrice générale

427, avenue Laurier Ouest, 7e étage
Ottawa, Canada
K1A 1M3
Site Web : www.ccrmd-hmirc.gc.ca

November 3, 2008

The Honourable Leona Aglukkaq, C.P., M.P.
Minister of Health
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister:

I am pleased to submit to you the annual report of the Hazardous Materials Information Review Commission, in accordance with subsection 45(1) of the *Hazardous Materials Information Review Act*. The report covers the fiscal year ending March 31, 2008.

Yours sincerely,

S. Watts

Sharon A. Watts

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HMIRC AT A GLANCE

BALANCING BUSINESS COMPETITIVE ADVANTAGE WITH WORKER SAFETY

The Hazardous Materials Information Review Commission (HMIRC) is tasked with balancing the chemical industry's right to protect confidential business information with the right of employers and workers to be informed about the chemical materials they work with and associated health and safety hazards.

The Commission is an independent agency governed by the *Hazardous Materials Information Review Act* and its related regulations. Its role is quasi-judicial: HMIRC impartially renders decisions on claims for exemption from the disclosure requirements set out by the Workplace Hazardous Materials Information System (WHMIS), in keeping with the interests of the federal, provincial and territorial governments. WHMIS requires chemical manufacturers, importers, distributors, and employers to produce cautionary labelling for containers of controlled products and to provide a material safety data sheet (MSDS) for every hazardous product produced or used in Canadian workplaces—specifying hazardous ingredients, toxicological properties, worker safety precautions, first-aid treatment, and other considerations. HMIRC is charged with evaluating MSDSs and labels provided by chemical companies that apply for trade secret exemption.

A critical mandate

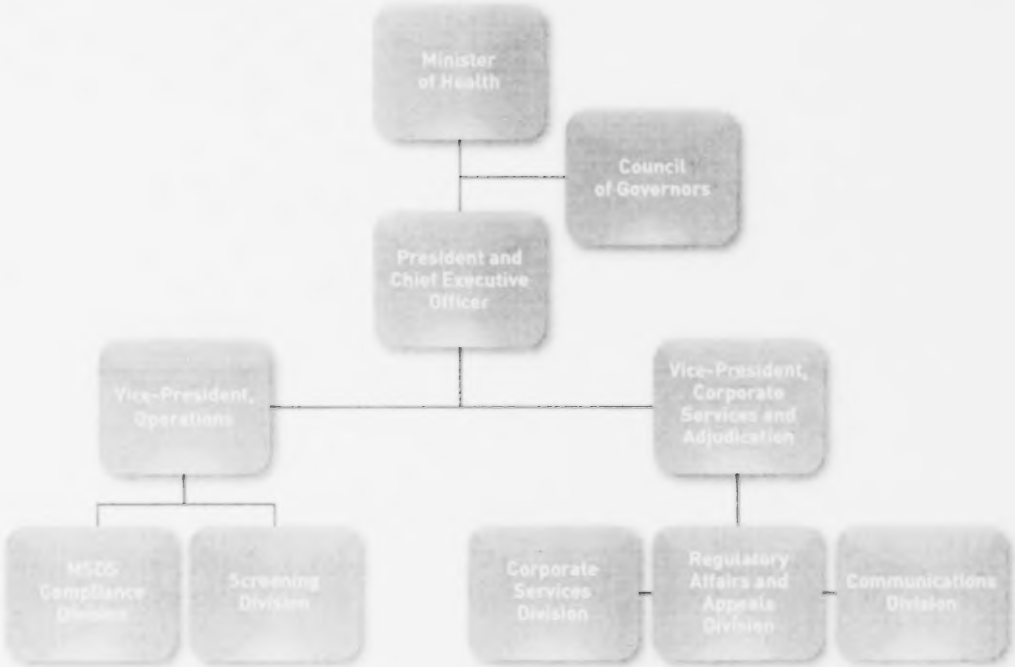
Specifically, HMIRC is responsible for:

- Registering claims for trade secret exemptions and issuing registry numbers
- Adjudicating and issuing decisions on the validity of claims for exemption using prescribed regulatory criteria
- Rendering decisions on the compliance of MSDSs and labels to WHMIS requirements based on sound scientific principles
- Convening independent tripartite boards to hear appeals from claimants or affected parties on decisions and orders

Governance: multijurisdictional representation

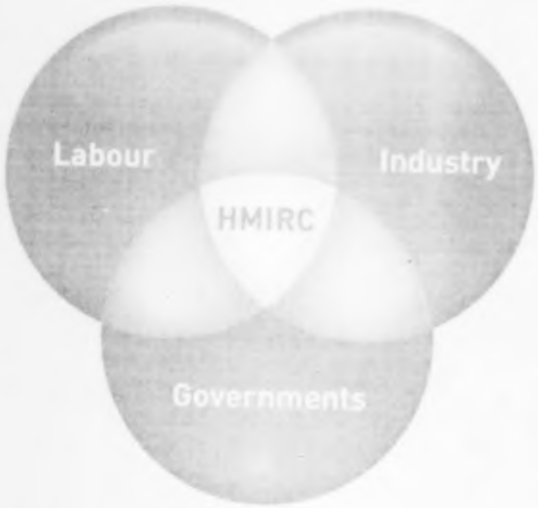
The Commission's governance structure is collaborative: the Council of Governors acts as the central advisory body, providing strategic guidance. The Council's 18 members represent key stakeholder groups—workers, suppliers, employers, the federal government, and provincial and territorial labour ministries responsible for occupational health and safety organizations.

The Commission's President and Chief Executive Officer, appointed by the Governor in Council, carries out the mandate as detailed in the *Hazardous Materials Information Review Act*, strategic plans and policies. The Vice-President of Operations directs the work of the MSDS Compliance and Screening divisions, and the Vice-President of Corporate Services and Adjudication oversees the work of the Corporate Services, Regulatory Affairs and Appeals, and Communications divisions.



Cooperative partnerships

HMIRC works collaboratively and cooperatively with a broad range of WHMIS stakeholders.



Federal, provincial, and territorial government agencies

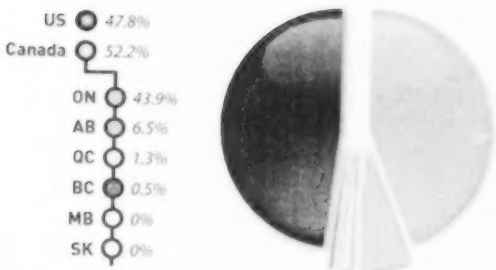
Labour organizations and workers

Chemical suppliers and employers

ORIGIN OF CLAIMS

FIGURE 1

In keeping with the trend of the last five years, US suppliers submitted nearly half of all claims to the Commission in 2007–08, indicating that US firms are as interested as their Canadian counterparts in using this country's mechanisms to protect their trade secrets.



PERCENTAGE OF NEW AND REFILED CLAIMS

FIGURE 2

The percentage of original-to-refiled claims is 70 percent.

VIOLATIONS PERCENTAGES: TOXICOLOGY, FIRST AID AND HAZARDOUS INGREDIENTS

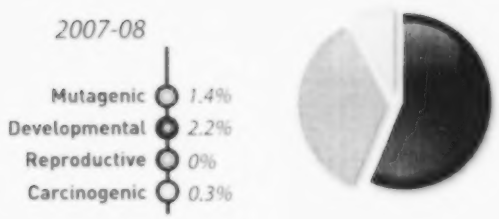
FIGURE 3

Among the top three MSDS violations, the percentage related to toxicology has always been higher than for hazardous ingredients and first aid. Accurate information on these three components is essential for the protection of worker health and safety.

VIOLATIONS PERCENTAGES: MUTAGENIC, DEVELOPMENTAL, REPRODUCTIVE, AND CARCINOGENIC

FIGURE 4

Violations related to mutagenic and developmental factors have continued to remain high—cause for concern given the potential long-term health implications for women in the workplace.



ENSURING SAFETY. ENABLING COMPETITION.

Each day, thousands of workers in manufacturing facilities across the country handle chemical products that may pose serious health hazards if precautions are not taken. Chemical suppliers are required by law to provide information about these products through material safety data sheets and product labels—and are at the same time entitled to protect their trade secrets. The Hazardous Materials Information Review Commission plays a crucial role in balancing the industry's right to competitive confidentiality with the need to provide accurate health and safety information to workers.

In 2007-08, building on the tremendous renewal efforts undertaken in the preceding years, HMIRC organized to achieve new efficiency in its operations and new agility in its decision-making. The Commission worked steadily to maintain its high standards of scientific rigour and its commitment to both workers' health and safety and industry's competitive vitality.

Renew. Rally. Realize.

" The Hazardous Materials Information Review Commission (HMIRC) ten-year legislative, regulatory and administrative renewal program has been highly successful thanks to a dynamic and constructive partnership between the Council of Governors representing the workers, employers, and suppliers, and the federal, provincial and territorial governments. These achievements by consensus foretell a promising future for HMIRC and WHMIS. "

— Dr. Yves Brissette, Chair, HMIRC Council of Governors

FLOURISHING

MESSAGE FROM THE PRESIDENT

When I took up the post of President and CEO in August 2007, the transformation of the Commission was well underway. The renewal initiative begun in 1998 had, in fact, just borne fruit with the confirmation of three legislative amendments to the Act that governs us.

Having worked with the Commission for several years previous, and having actively participated in the renewal effort, achievement of that milestone was personally gratifying.

Progress made since then, in this last fiscal year, has been equally rewarding. The HMIRC team has demonstrated continued dedication and professionalism and an enterprising spirit in taking the steps necessary to prepare for adoption of the legislative changes. The synergy, enthusiasm and creativity of our staff are remarkable.

Equally notable is the ongoing support of our Council of Governors—advisors and strategic partners representing labour, industry, federal, provincial and territorial governments. Their common vision and unity is truly exceptional and a driving force for this agency.

> **My vision is to lead a sustainable, well-functioning agency that serves the stakeholders it was created to protect and support.**
>
> — Sharon A. Watts,
> President & CEO

Bursting forth

Our renovated offices are the most visible signs of a blossoming organization. Behind the scenes as well, much has been accomplished.

On the legislative front, we worked in close consultation with Council and our stakeholders to develop regulations that reflected the changes to the *Hazardous Materials*

Information Review Act (HMIRA), both of which will come into force on the same date. The regulatory amendments will streamline the claim process and reduce the administrative burden on claimants. We created an online claim mechanism for the Commission's website, and also modified the appeal process to improve the application of appeal board decisions in policymaking and training.

Over the past year, we worked hard to make operational improvements aimed at increasing our efficiency in the review of claims. Backlog reduction was our top priority and attending to the associated capacity issues a central focus. We produced a comprehensive business case that identified the resources needed to eliminate the backlog over the next three years as well as to strengthen our administrative and corporate capacity. This earned us the first year of funding, allowing for preparations to expand the team and renovations to existing office space to house the new recruits.

Aside from recruitment itself, we created a new training and development program for evaluators that will be implemented in the coming year as well as a leadership development program for team leaders and senior evaluators. In addition, we devised a human resources strategy that will act as the platform for our growth and evolution for years to come.

As part of our capacity assessment, we undertook a thorough operational review based on Management Accountability Framework (MAF) principles, and solicited input and observations from staff on areas for improvement. The results of these efforts have been reflected in action plans for both our Operations and Corporate Services and Adjudication branches. With those plans in place, and within the framework of a renewed organization, we have embarked on a comprehensive optimization of operational procedures and processes.

Evolution and sustainability

We look forward to our 20th anniversary year with optimism, anticipating the fuller realization of our potential as an organization. Our role as a trade secret mechanism within WHMIS is unique—and critical. We are an important health and safety advocate for Canadian workers and a strategic partner to industry, helping to safeguard trade secrets and support market competitiveness.

Our statistics show that more than 95 percent of MSDSs filed with the Commission do not comply with WHMIS requirements. By serving as scientific reviewers of MSDSs, evaluators and advisors, we help ensure that the information that is shared with Canadian workers—outside of trade secret confidentiality provisions—is accurate. This protects workers' health and safety and also supports the sustainability of the chemical industry.

Carrying forward our statutory mandate, we will continue to engage with stakeholders to ensure our ongoing relevance, streamline our claim exemption process to achieve further efficiencies, and strengthen our partnerships with fellow members of the federal Health portfolio.

We will maintain active participation in the review of the *Hazardous Products Act* (HPA) and other legislation that may impact the Commission and/or hazardous materials subject to confidential business information (CBI) regulations, and remain closely involved in the development of a Canadian implementation strategy for the Globally Harmonized System. Within our organization, we will pursue our aspiration to be a workplace of choice in Canada—one that rewards excellence and offers a supportive environment for all employees.

Our commitment is to ongoing renewal: we will remain connected to our mandate, dynamic and forward-thinking in order to ensure our relevance over the long term and to move Canada's occupational safety and health system to the fore as an international model of excellence.

Sharon A. Watts

RENEW.

OPERATIONALIZING LEGISLATIVE CHANGES

Following Royal Assent in March 2007 of three key amendments to the *Hazardous Materials Information Review Act*—carried out as part of the Commission's renewal agenda—last year HMIRC worked diligently to develop a series of regulations that will put into practice the principles and provisions of the new law.

In brief, the new legislation will: allow claimants to provide a summary of the information supporting their claims; permit them to voluntarily bring the MSDS and product label accompanying each claim into compliance without issuance of a formal order; and enable the Commission to provide factual clarifications related to the screening process in appeal board proceedings.

In order to properly inform HMIRC's various stakeholder groups, the Commission began developing communication tools and enacting its plan to convey how the amendments will be operationalized. In addition, HMIRC created an interactive claim form through its website that introduces greater efficiency and further reduces the administrative burden on claimants.

> Other countries respect the Canadian system for its uniqueness: it is the product of consensus among federal, provincial and territorial governments, industry and labour.
>
> — Mr. Gordon E. Lloyd, Supplier representative, HMIRC Council of Governors

Regulatory reform

The proposed regulatory amendments developed in 2007-08 will streamline the claim process for trade secret exemption from the disclosure requirements under WHMIS—and therefore expedite the provision of accurate health and safety information to workers. Throughout the year, the Commission developed and finalized the proposed amendments as well as a Regulatory Impact Analysis Statement for pre-publication. In the next fiscal year these will be published in *Canada Gazette Part I*, and stakeholders will have the opportunity to provide comments over the ensuing 75 days. HMIRC will consider all comments before submitting the regulatory amendments to the Treasury Board for final approval.

Pilot initiatives

In preparation for the amendments, the Commission undertook certain pilot initiatives in 2007-08. A voluntary compliance program was tested, giving claimants the ability to voluntarily correct common errors and omissions in their MSDSs before formal submission to the Commission. At the time of a claim's registration, HMIRC reviews each MSDS against a list of common errors and omissions and communicates the results to the claimant; the claimant is able to then promptly make the necessary revisions and resubmit the corrected MSDS.

Development of an electronic Application for a Claim for Exemption form was another pilot project undertaken in 2007-08. The form features interactive elements that simplify the application process for claimants and allows applicants to customize the forms to suit their unique requirements. Feedback was gathered through the pilot phase; refinements will be applied in the coming year.

Global harmonization

HMIRC is an active partner in interdepartmental working groups and in the federal Health portfolio. The Commission also plays a role in monitoring Canada's implementation of the Globally Harmonized System for the Classification and Labelling of Chemicals (GHS). GHS is an initiative led by the United Nations to develop a single, international system that classifies chemicals according to their hazards and establishes standards for labelling and safety data-sheet publication. In carrying out its role, the Commission participates on the WHMIS Current Issues Committee and related working groups, ensuring a full understanding in Canada of the implications for governments arising from the GHS.

> I commend all those who participated in the consultation process regarding these changes. They have provided a shining example of what can be achieved when stakeholders and government work together for the good of all Canadians.
>
> — Hon. Ethel Cochrane, Bill to Amend, Third Reading

RALLY.

BUILDING TEAM CAPACITY AND HARMONY

As a small agency with a single mandate, HMIRC dedicates approximately 75 percent of its human resources to operations—primarily to the processing of claims for trade secret exemption. Over the past year, as the Commission focused on increasing the efficiency of its claim process, a comprehensive business case was produced identifying a shortfall in the resources required to maintain and increase the Commission's operational and administrative capacity. The Commission has experienced a significant rise in the number and complexity of claims for exemption from trade secret disclosure. This, coupled with a chronic shortage of qualified scientific personnel and insufficient resources in supporting areas, has resulted in a two-year claim-processing backlog. Near year end, the Commission secured funding for the first year of a three-year backlog elimination plan.

We turned the Operations Branch around by implementing the creative and innovative ideas identified by the staff themselves.

— Dr. Moe Hussain, VP Operations Branch, HMIRC

After collaborating with organizations to gather best practices, HMIRC's management team created a comprehensive HR strategy that defined multiple channels for recruitment. The Commission restructured physically as well, knocking down walls, building new offices and extending its technology infrastructure to accommodate the expanded team.

Staffing up

Recruiting and retaining qualified personnel is an ongoing challenge for small agencies. This is especially true for HMIRC, given the highly specialized nature of its scientific work and a shortage of qualified talent. As part of its human resources strategy and plans to reduce its claim backlog, in 2007-08 the Commission established a partnership with federal Health Portfolio partners to begin building a pool of qualified scientific candidates who can be recruited on short notice. The Commission also introduced tools to increase employee awareness of human resources modernization by integrating HR planning and business planning, empowering line managers to be more actively involved in HR planning, and promoting continuous learning and development of all employees.

Outreach and the web

HMIRC's most prominent communications and outreach tool is its website. A full review of the website was undertaken last year in preparation for introduction of the legislative and regulatory amendments. The revised website will be launched once the new legislative amendments are enacted. The Commission also initiated efforts to modernize its website in adherence with the Common Look and Feel 2.0 standard set out by the Treasury Board Secretariat. Launch is slated for December 2008.

Engaging with stakeholders

Once again, the Commission was a presence at several key industry events—including the Society of Toxicology's 47th Annual ToxExpo in Seattle, Washington, and the Eleventh International Congress of Toxicology in Montréal, Quebec. These forums allow the Commission to maintain a dialogue with toxicologists from around the world, and with specialists in consumer product safety, safety assessment and data management. During the year, HMIRC also presented its findings on MSDS violations to the Canadian Association of Manufacturers and Exporters, raising awareness of trends in data reporting and areas for improvement. In addition, the Commission co-authored a scientific paper with the National Office of WHMIS at Health Canada on MSDS violations. The paper was presented at the Health Canada Science Forum.

Research activity

Drawing on its expertise and scientific nature, the Commission continues to provide input on and guide research activities related to occupational safety and health (OSH). In 2007-08, HMIRC teamed up with other players as part of a Compliance working group tasked to identify priority OSH research to be undertaken jointly by the federal, provincial and territorial regulatory occupational safety and health jurisdictions. The Commission is also following progress of a major study being conducted by Health Canada assessing environmental chemical concentration levels in mothers and their infants.

REALIZE.

OVERCOMING THE BACKLOG

Extensive work was completed in 2007-08 to create the conditions for eliminating the Commission's claim backlog. In addition to recruitment of new evaluators, the evaluator-training program was revamped and a career-development program was created to build capacity for future years.

Following a two-day consultation workshop with operations staff, HMIRC undertook a full review of its MSDS evaluator's handbook and converted it from a reference guide to a user manual—introducing step-by-step instructions that help staff become familiar with the procedures and requirements associated with MSDS evaluations more efficiently. Operations managers created a three-day course to orient staff to the details of the claim assessment process, and began development of a template for advice documents that will act as a complement. They also strengthened the Commission's buddy system, pairing new staff with seasoned evaluators for one to two months of on-the-job coaching—bringing new evaluators to a functional level within that timeframe. To improve retention, managers defined a four-staged career-progression path for toxicologists and other scientists, from entry-level evaluators to senior biologists, and made a commitment to this process.

In the year ahead, information technology will be a priority: the Commission will integrate its multiple databases and automate manual procedures.

A total of 332 claims were registered last year, of which 70% were new claims and 30% refilings.

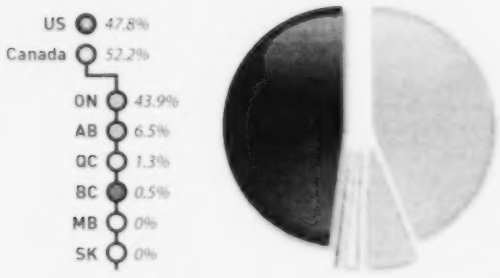
Claims registration data

A total of 332 claims were filed in 2007-08. Of those, 97% were verified and registered within seven days, in keeping with the Commission's service standard. The remaining 3% of applicants were required to provide additional information before verification and registration. Approximately 70% of claims registered were original filings; 30% were refilings of previously approved claims, as required by law (Figure 2). Nearly 48% of claims were from US suppliers, while 52% were from Canadian suppliers—the majority of which were from Ontario (Figure 5), a trend that has emerged over the last five years.

ORIGIN OF CLAIMS

FIGURE 5

In keeping with the trend of the last five years, US suppliers submitted nearly half of all claims to the Commission in 2007-08, indicating that US firms are as interested as their Canadian counterparts in using this country's mechanisms to protect their trade secrets.



> The Commission's continued efforts to ensure that Canada's world-class confidential business information provisions are maintained for the benefit of workers, suppliers and employers are to be applauded.
>
> — Mr. Larry Stoffman, Labour representative, HMIRC Council of Governors

PERCENTAGE OF NEW AND REFILED CLAIMS

FIGURE 6

Over the last three years, the percentage of original-to-refiled claims has remained near 70 percent.

Accelerated claim processing

Backlog reduction was a top priority for the Commission in 2007-08. With the efficiencies and process refinements introduced, and with plans for an expanded evaluation team, the Commission was able to begin to make strides. During the year, a total of 376 claims for exemption were processed to the stage where the MSDS was reviewed and an advice document prepared. This represents an apparent significant increase compared to 2006-07, a year where there was a particularly high volume of complex claims, recruitment challenges, and limited trained staff.

Priority for high-hazard products

Once again, the Commission gave priority attention to claims for products considered to pose higher risks to workers. Of the 284 decisions issued last year, 55% were classified as high-hazard; these were reviewed without significant delay so that corrected MSDSs could reach the workplace expeditiously.

Dispute prevention

Through dialogue with its claimants, HMIRC was able to clarify Commission requirements so that claimants could supply all the necessary information needed by screening officers to render claim decisions. This dialogue helped prevent significant disputes from arising.

> "The new training program reinforces the value the Commission places on its people and its commitment to being a workplace of choice."
>
> — Ms. Alana Clegg, Health and Safety Evaluator, HMIRC

VIOLATIONS PERCENTAGES: TOXICOLOGY, FIRST AID AND HAZARDOUS INGREDIENTS

FIGURE 7

Among the top three MSDS violations, the percentage related to toxicology has always been higher than for hazardous ingredients and first aid. Accurate information on these three components is essential for the protection of workers' health and safety.

2005-06

Toxicology *32.2%*
First Aid *14.2%*
Haz Ingr *12.8%*

2006-07

Toxicology *23.2%*
First Aid *15.6%*
Haz Ingr *16.1%*

2007-08

Toxicology *32%*
First Aid *8%*
Haz Ingr *19.6%*

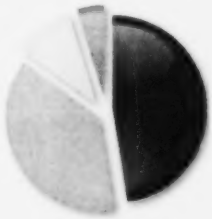
VIOLATIONS PERCENTAGES: MUTAGENIC, DEVELOPMENTAL, REPRODUCTIVE, AND CARCINOGENIC

FIGURE 8

Among toxicological violations, the percentage related to reproductive and carcinogenic factors has declined over the last four years; violations related to mutagenic and developmental factors have continued to remain high—cause for concern given the potential long-term health implications for women in the workplace.

2005-06

Mutagenic *2.5%*
Developmental *3.2%*
Reproductive *0.3%*
Carcinogenic *0.7%*



2006-07

Mutagenic *1.9%*
Developmental *1.8%*
Reproductive *0.8%*
Carcinogenic *0.2%*

2007-08

Mutagenic *1.4%*
Developmental *2.2%*
Reproductive *0%*
Carcinogenic *0.3%*

Violation trends

Over the last five years, the number of violations per claim has remained fairly steady between 8-9. The majority falls within the categories of toxicology, first aid and hazardous ingredients. Accurate information on these three components is a significant contributor to the protection of worker health and safety. The volume of violations related to elements with potential long-term health implications—mutagenic, developmental, reproductive and carcinogenic—was low, from zero to 2.2%, although still presenting some cause for concern for workers, in particular women of childbearing age.

Database updates

The Commission's annual scientific reference database update was completed, adding new publications on 708 ingredients found in chemical products. To improve its annual departmental performance reporting, the Commission also upgraded its claim management and time utilization databases to include performance measurement indicators.

In 2007-08,
Claims Filed and Registered: 332
Claims Processed with Prepared Advice Documents: 376
Decisions Issued: 284

FINANCIAL SUMMARY

Revenue (in thousands of dollars)	
Revenue from Claims for Exemption	570
Revenue from Appeals	2
Total Revenue	*572*
Expenditures (in thousands of dollars)	
Salaries and Wages	2,421
Other Operating	810
Total Expenditures	*3,231*
Human Resources	*Full-time equivalent staff*
Office of the President	2
Operations Branch	22
Corporate Services and Adjudication Branch	8
Total Human Resources	*32*

COUNCIL OF GOVERNORS

OVERVIEW OF THE CLAIM FOR EXEMPTION PROCESS

The Workplace Hazardous Materials Information System (WHMIS) requires that chemical suppliers provide employers with information on the hazards of materials produced or used in Canadian workplaces. They must disclose their products' health and safety risks as well as information on safe handling, storage, transportation, disposal, and first-aid treatment. Employers then prepare workplace material safety data sheets (MSDSs) and product labels to provide workplace safety education.

When a supplier or employer wants to protect confidential business information, they must file a claim for exemption with the Hazardous Materials Information Review Commission. For the product to be legally available on the Canadian market, a registry number issued by the Commission is required on the MSDS, and for certain claims, on the label.

A claimant may decide to withdraw a claim at any stage of the process.

Submitting a claim

Claims for exemption are submitted directly to the Commission. (For more about submitting a claim, please see the Commission's website at **http://www.hmirc-ccrmd.gc.ca**.)

Pre-registration check

When the Commission receives a claim, staff verify that the application and accompanying MSDSs and labels are complete and contain no obvious errors, and collect and verify fees.

Registering the claim

Once the claim application is complete and correct, it is assigned a registration number, which is then placed on the MSDS in place of the product's confidential business information. This allows the company to import to or sell its product in Canada, while the decision-making process continues.

A notice of filing outlining the basic characteristics of the claim is published in Part I of the *Canada Gazette*, giving anyone affected by the product the opportunity to provide a written submission to the Commission as to whether the claim should or should not be judged valid.

Reviewing the claim

The Commission's health and safety evaluators review the claim against the most recent scientific information. The screening officers then decide whether the claim is valid, based on certain regulatory criteria, and whether the MSDS and label comply with the *Hazardous Products Act* and *Controlled Product Regulations*, or in the case of an employer claim, other applicable federal, provincial or territorial occupational health and safety requirements.

The decision

At the end of the claim review process, a formal Statement of Decision is sent to the claimant.

If a claim is found to be valid, the claimant is granted an exemption of three years, at which point the claimant will need to refile the claim in order to continue to be exempt.

If a claim is found to be invalid and/or the MSDS does not meet requirements, the Commission issues a formal order for its revision and follows up to ensure compliance. All orders specify the date by which corrections must be made if the product is to continue to be sold in Canada.

Notices of decisions and orders are published in the *Canada Gazette*. If no appeal is filed, the claimant must provide the Commission, within 40 days of the appeal expiration period, an amended MSDS to be reviewed to ensure compliance with the order.

Appeals

When decisions and orders are published in the *Canada Gazette*, claimants and affected parties have 45 days to launch an appeal. If an appeal is filed, a notice of appeal is also published in the *Canada Gazette* to provide any other affected parties an opportunity to make representations to the appeal board. The length of the appeal process varies with the complexity of each case.

The appeal board decides whether to dismiss the appeal and confirm the Commission's decision(s) or order(s), or to allow the appeal and either vary or rescind the decision(s) or order(s) being appealed. A notice of decision, including reasons, is published in the *Canada Gazette*.

Hazardous Materials Information Review Commission
427 Laurier Avenue West, 7th floor
Ottawa, Ontario K1A 1M3

Tel: 613.993.4331
Fax: 613.993.5016

Visit our website at www.hmirc-ccrmd.gc.ca